JOHN CHONG v. HERON, GETHIN-JONES & LIOW

[O.C.J. (Winslow J.) February 1, 1963]

[Singapore — Suit No. 410 of 1962]

Master and Servant — Contract of service by firm of medical practitioners with doctor — Provision in contract that either party could terminate contract by 3 months' notice — Notice by employers to employee — Employee seeking two weeks' leave after notice — Whether unreasonable — Subsequent conduct of employers — Whether amounting to repudiation of contract of service — Liquidated damages.

The plaintiff, a doctor, was employed by the defendants, a firm of medical practitioners, by letter dated July 20, 1961 for one year from August 1, 1961 at a monthly salary of $1,750 plus a monthly car allowance of $250 and it was provided in the contract that either party was entitled to give 3 months' notice in writing of termination of employment to the other provided always that in the event of professional misconduct the defendants could forthwith terminate his employment without any notice or payment in lieu thereof. On March 15, 1962 the plaintiff received a letter from the defendants dated March 9, 1962 giving him 3 months' notice of dismissal as from the March 15, 1962. The plaintiff replied by letter ante-dated March 10, 1962 delivered to the defendants on March 17, 1962 and on that day, the plaintiff had an interview with one of the defendants in connection with the two weeks' annual leave which he wished to take from March 19, 1962 to enable him to look for a job urgently in the Federation. This was refused him. On the 19th morning, the plaintiff learnt that he had been replaced by a temporary doctor at the place where he was usually expected to report for work. He proceeded to the defendants Raffles Place Clinic where he was refused his medical bag. He therefore decided that he was not wanted and he removed his belongings out of the office. Meanwhile the defendants by letter dated March 18, informed him that failure to report for work from March 19 onwards would be regarded as a serious breach of contract. The plaintiff now claimed $6,346.77 for work done and services rendered including a sum of $5,250.00 being liquidated damages for breach of the contract of service.

Held: (1) the conduct and behaviour of the defendants could not have left the plaintiff in any doubt as to the termination of his services;

(2) the plaintiff's request for leave whilst under notice of dismissal was in the circumstances neither unreasonable nor amounting to misconduct professional or otherwise;

(3) the defendants, by refusing to regard him as still employed by them after March 17, 1962 repudiated the contract of service and the plaintiff's claim succeeded.

Cases referred to:—

(1) *Hochster* v. *De La Tour* (1853), 2 E. & B. 678; 22 L.J. (Q.B.) 455; 22 L.T. (O.S.) 171; 17 Jur. 972; 1 W.R. 469; 118 E.R. 922.

(2) *In re Lavey* [1920] 1 K.B. 674.

(3) *Re Rubel Bronze and Metal Company and Vos* [1918] 1 K.B. 315 at page 323.

(4) *Turner* v. *Sawdon & Co.* [1901] 2 K.B. 653.

ACTION.

J. E. Lloyd for the plaintiff.

C. H. Smith (*K. E. Hilborne* with him) for the defendants.

Cur. Adv. Vult.

Winslow J.: In this action the plaintiff claims a sum of $6,346.77 by means of a specially endorsed writ for work done and services rendered by him as a doctor for the defendants, including a sum of $5,250 being liquidated damages for breach of a contract of service dated 20th July, 1961.

At the conclusion of the hearing I reserved judgment in order to enable me not only to consider the authorities both cited and uncited but also to make a scrupulous evaluation of the evidence.

The plaintiff was employed as a Medical Practitioner by the defendants for one year as from 1st August, 1961 at a salary of $1,750 per month and a car allowance of $250 per month. Either party was entitled to give notice of termination of employment by giving 3 months' notice in writing to the other provided always that in the event of professional misconduct the defendants could forthwith terminate his employment without any notice or payment in lieu of notice (the underlining is mine).

On August 1st, 1961 he commenced working for the defendants in accordance with this contract of service, which I find proved, until March 15th, 1962 when he received a letter dated March 9th, 1962 informing him that owing to the uncertainty of future medical practice the defendants would like to give him 3 months' notice of termination of his service as from March 15th, 1962. They very much regretted this decision which they were compelled to make in his own interests. In reply to this letter the plaintiff wrote a letter ante-dated to March 10th which he caused to be delivered to the defendants on March 17th. He attended work as usual that day, which was a Saturday, where he saw one of the partners, Dr. Liow Yew Chye, who referred him to Dr. Heron in connection with the two weeks' annual leave which the plaintiff wished to take commencing on March 19th in order to enable him to look for a job urgently in the Federation of Malaya where two vacancies had been advertised. This information had also been communicated in his letter.

An interview accordingly took place between the plaintiff and Dr. Heron in the latter's office at about 1.00 p.m. on 17th March. It is as to what exactly took place during this interview that a dispute arises. The plaintiff said that the interview began with cordiality and ended abruptly. It lasted for half an hour, in the course of which the plaintiff said that Dr. Heron assured him that he had always been on the plaintiff's side and that he did not agree with the notice terminating his employment delivered on 15th March. He said that Dr. Heron informed him that he had been out-voted two to one by the other partners. On his asking Dr. Heron whether the others had anything against him, Dr. Heron is said to have replied "God knows those two may have something against me too". He also gave evidence to the effect that Dr. Heron had confidentially told him that they (meaning the other two partners) had someone to replace him at 24 hours' notice. The plaintiff asked Dr. Heron to put this in writing as it would help his application for leave but Dr. Heron declined. He then reminded Dr. Heron that the latter had

promised to help him in the course of a conversation two weeks previously. Dr. Heron was visibly upset. He became more upset when the plaintiff told him that he was going on leave. Dr. Heron told him to clear out and never come back and instructed an employee to requisition the medical bag allocated by the firm for the plaintiff's use and to place it in Dr. Heron's office. This was done. So much for the plaintiff's version of what took place.

Dr. Heron's version of this interview contradicts the plaintiff's story on essential points. He said that the plaintiff was agitated and asked him why he had been given notice and Dr. Heron told him that he could not give him any details of why notice had been given nor was it necessary to do so. He said that the plaintiff was adamant about taking a fortnight's leave from 19th March. Dr. Heron said that he pleaded with him to delay his leave as it would be difficult to get a substitute at 24 hours' notice, and that the plaintiff was "practically putting a pistol at our heads. I told him if he took a fortnight's leave he need not come back as he would be dismissed". He agreed that he requisitioned the plaintiff's medical bag which was placed in his (Dr. Heron's) room after the interview although normally the plaintiff would have been allowed to take the bag home for outdoor visits over the weekend. The bag, of course, belonged to the defendants.

On 18th March, 1962 Dr. Heron and Dr. Liow Yew Chye arranged for the latter's brother, Dr. Liow Yew Lee to replace the plaintiff on 19th March under somewhat nebulous terms said to be contingent on whether the plaintiff turned up on 19th March or not. Dr. Liow Yew Lee duly reported for work next morning.

A letter dated 18th March was sent by registered post on 19th March by the defendants to the plaintiff informing him that if he failed to carry out his duties from the "19th instant onwards we shall treat such failure as a most serious breach of contract". This letter only reached the plaintiff on 22nd March.

On the morning of the 19th (a Monday) the plaintiff telephoned the Harbour Board Clinic, where he would normally have had to report at 8.30 a.m., to inquire from the staff whether there was a doctor there. He said that he did this in the interests of his patients there. On being informed that Dr. Liow Yew Lee was there he decided to report at the Raffles Place Clinic of the defendants where he asked for his medical bag. He was told by members of the defendants' staff that it had to remain in Dr. Heron's room on the latter's instructions. None of the partners was in. He decided that he was not wanted and the employees of the defendants helped him to move his belongings out of his office.

On 23rd March the name plate of the plaintiff was removed from the board listing the names of doctors in the practice.

Before that day, however, a significant meeting took place on 22nd March in Dr. Liow Yew Chye's office between the latter and the plaintiff who had only that morning received the letter dated 18th March, 1962 containing the warning that failure to report on the 19th onwards would be regarded as a serious breach of contract. Dr. Liow said in evidence that he pointed out to the plaintiff that he was "in the process of dismissing himself" but the evidence of the plaintiff, supported by that of his wife and sister-in-law who were also present, is clearly to the effect that so far as Dr. Liow was concerned the plaintiff had dismissed himself and would not be taken back. Even Dr. Heron was reluctant to admit that, had the plaintiff so desired, he would have been reinstated.

To dispose of two matters of law raised by counsel for the defendants first; it was argued that the contract of service had not been proved. There was, in my opinion, ample evidence of the contract which was contained in a letter of appointment dated 20th July, 1961 (Exhibit P2). Even the pleadings did not deny the existence of such a contract. It was further argued that the statement of claim was defective in that no special damage had been claimed. In my opinion, whilst express words claiming special damage as such may not have been used, the defendants' case could not possibly have been prejudiced as, in fact, liquidated damages to the extent of the equivalent of 3 months' salary in lieu of notice were particularised. In any case this is a claim in contract for a liquidated sum and if he succeeds in proving breach of contract his claim cannot fail.

Counsel for the defendants also argued that the contract did not provide for 3 months' salary in lieu of notice. Whilst here again this may not have been expressly stated, in so many words, it is, in my opinion, clear from the letter of appointment that 3 months' salary in lieu of notice was within the contemplation of the defendants when they purported to have the right to dismiss the plaintiff for professional misconduct without notice or payment in lieu of notice. The length and quality of the notice were expressly stated to be 3 months' notice in writing. From this, the conclusion is inevitable that the parties intended that at least 3 months' salary would be payable on wrongful dismissal or repudiation of the contract without notice. In any case I hold that, if there was a repudiation of contract, 3 months' salary was reasonable in lieu of notice and could properly be claimed.

It is not an enviable task to have to adjudicate on differences between professional men like doctors who, by virtue of their education, status and standing in the community, can expect their evidence on oath to be treated with the most scrupulous care for, whilst differences and contradictions there may be, they are by virtue of the professional and other oaths they have taken, not lightly to be branded as purveyors of untruths, vagaries or inequities.

It is therefore with some regret that I veer towards the version given by the plaintiff as being the more accurate one as to the events of that historic afternoon of Saturday, the 17th of March, 1962 when the unhappy interview between the plaintiff and Dr. Heron took place. I am satisfied that the plaintiff must have been given the over all impression that he could clear out and stay out and never come back to the firm again just because, like Oliver Twist, he asked for more than, in Dr. Heron's view, he was strictly entitled to.

Sometimes things are said in heat which in any interview like this, with its known background and in its factual context, is almost bound to engender on the part of both sides. But the subsequent conduct and behaviour of the partners and their employees could not possibly have left the plaintiff in any doubt as to the termination of his services and such subsequent conduct on their part is more consistent with the plaintiff's version. It must be remembered that prior to 17th March he had been smarting under the odium of a virtual dismissal on 3 months' notice delivered to him on 15th March, 1962. Was it so remiss of him to express a wish, whilst under notice, to take leave from 19th March onwards? Employers can afford to be more liberal, if not magnanimous, towards professional or other employees under notice when the latter express a desire to take the leave that is due to them "at a time convenient to both" in order to look for new jobs. To rely on the insistence of such an employee on taking his leave forthwith as a ground for regarding him as dismissing himself was not, in my view, either liberal or magnanimous nor, in my opinion was it such an unreasonable attitude on his part as to warrant an employer's regarding such action as misconduct, professional or otherwise, particularly when the employee had been treated with little regard for his personal wishes, having regard to the unfortunate position in which he found himself.

It is no doubt true that the plaintiff may have rubbed up the defendants the wrong way by his insistence on taking leave when confronted with a notice of termination. The defendants say they were short of a doctor and could ill afford to be left high and dry on 19th March. Luckily for them a brother of a partner was available. But so was the plaintiff who, despite any possible misunderstanding, if misunderstanding there was, could easily have been contacted by phone before any arrangements were made to fill his place. To this the defendants say that the plaintiff could equally well have contacted them by phone — which is exactly what he did on the morning of 19th March when he discovered that he had been replaced!

It was argued that the plaintiff was defeated by the case of *Hochster* v. *De La Tour* [1] but I am of opinion that, even if that case has any application, which I do not think it does, being concerned as it is with executory agreements renounced before commencement of employment, there was no intention on his part to break the contract nor any sufficiently communicated renunciation as such of the contract on his part. In fact the defendants seem, on the evidence, to have been quite happy about acquiescing in his staying away from the office and made no effort whatsoever to make his return to duties on Monday or thereafter, acceptable or welcome. In fact they frustrated his return. Further, they posted a letter of warning which could not possibly have reached him in time and "lay low", like the employer in *In re Lavey* [2], hoping that he would never turn up. When he did turn up on receiving this letter he was told that he had dismissed himself.

As McCardie J. said in *Rubel Bronze and Metal Company and Vos* [3] at page 323:—

> "Dismissal may be effected by conduct as well as words. A man may dismiss his servant if he refuses by word or conduct to allow the servant to fulfil his contract of employment. The refusal must of course be substantial in the sense that it is not a mere repudiation of some minor rights of the servant or of non-vital provisions of the contract of employment. The question is ever one of degree. If the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment, then there is at once a wrongful dismissal and a repudiation of the contract. I see no distinction in such a case as the present between repudiation by the defendants of their contractual obligations and 'a wrongful dismissal' in the ordinary sense of that phrase."

Whilst it is true that McCardie J. had some misgivings about the decision in *Turner* v. *Sawdon & Co.* [4], by which he was bound, he was able to distinguish between the two. In the latter case the plaintiff was engaged by the defendants as a representative salesman for four years at a salary. Before the expiration of that period the defendants, though willing to pay wages to the plaintiff, refused to give him any work to do as their representative salesman. The Court of Appeal held that there was no obligation on the part of the defendants to find work for the plaintiff and that so long as they paid the salary due to him there was no breach of contract by them. It is clear, however, from the facts of the case before me that, although there was no obligation to give the plaintiff work, there is no evidence whatever that wages were agreed to be paid to him and it is possible, by a different route, to reach the same conclusion, to wit, that there was a repudiation of the contract of service by the defendants on 17th March, 1962.

The plaintiff accordingly succeeds in his claim in contract and judgment will be entered for him for the amount claimed with costs, less any payments which have already been made towards salary after 17th March, 1962.

Judgment for the plaintiff

Solicitors: *Drew & Napier; Hilborne, Chung & Co.*